



Montgomery County Lodge 35, Inc.

MONTGOMERY COUNTY COUNCIL

**TESTIMONY OF FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE 35, INC.
CONCERNING BILL No. 10-00
COLLECTIVE BARGAINING - POLICE SERGEANTS**

April 4, 2000

Good Afternoon. I am Walter E. Bader, President, Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Bill 10-00 with amendments.

Before you is a proposal to allow sergeants to bargain collectively. Unlike many of their counterparts in other jurisdictions, including neighboring Prince George's County and Washington, DC. Montgomery County sergeants do not have this right.

What we strongly urge is that sergeants included in the current law with a special provision that, as a sub-unit, they be allowed to vote for either union representation or no union representation. If they vote for union representation, we believe that they should be in the existing bargaining unit. If they are in the same unit, as we propose, they should have the right to vote in any representation election. Kirk Holub will give you reasons.

Lodge 35 does not want a legislated right to represent sergeants. We want them to have the opportunity to decide whether any union will represent them and if they vote for union representation, they would, under existing law, have the right to vote in any subsequent union representation election.

It is essential that it be made clear that the right to bargain collectively is not the same as the right to representation. While collective bargaining involves union representation, a union may represent its members, including sergeants, even without collective bargaining. Employees have a right to representation under several sources of law, including the United States and Maryland Constitutions in some matters, Maryland law in other matters, and the Merit System Law.

Simply defined, collective bargaining is a continuous relationship between a group of employees and their employer. The employees elect their own representative in a democratic manner. Once elected and certified, the representative negotiates and administers a contract setting forth wages, benefits, and other terms and conditions of employment.

Collective bargaining is not new. It has been with us for over a century. Contracts have been with us long before the creation of this Nation. Indeed, the United States Constitution protects private contracts from government impairment. Yet, for some irrational reason, the concept of union contracts is a causes of controversy.

In 1980, under the leadership of President Larry Desmond, a Montgomery County police sergeant, members of FOP Lodge 35 twice obtained the necessary signatures to put the issue of collective bargaining to referendum. The voters of Montgomery County overwhelmingly approved a citizen initiative granting police officers the right to collective bargaining with binding arbitration. Enabling legislation was enacted in April 1982. Sergeants were excluded, primarily because they had been excluded under the 1976 meet and confer law.

Meet and confer resulted in three agreements or "Position Papers." And, although the bargaining unit consisted of only officers below the rank of sergeant, in 1980 when Sergeant Larry Desmond was elected President, the County and police department recognized his role and position and he was afforded administrative leave to conduct union business under the provisions of "Position Paper III."

While sergeants do not have collective bargaining rights, many currently are, and in the past, have been represented by FOP Lodge 35. Since 1969 when FOP Lodge 35 was chartered, we have represented numerous sergeants in grievances and appeals, hearing boards, matters before the Grand Jury, at the scenes of police shootings, and other matters. At practically any given time, we are representing one or more supervisors. We do not, however, provide this representation with bargaining unit fees or dues, and carefully segregate our finances as required by the United States Supreme Court.

After the current police labor relations law was passed, dues for sergeants were deducted during the first two collectively bargained agreements - 1983-85 and 1985-88. Then, suddenly when negotiations commenced for a new agreement, the County first threatened, then filed, but later withdrew, a Charge of Prohibited Labor Practice because we were representing sergeants. What brought this about was that the County hired a labor relations manager who had worked for the union that challenged Lodge 35 for representation rights under meet and confer. That individual decided that he could make an issue of our representation of sergeants and he did. In discussing this matter with former Chief Bernie Crooke, I was told that he had no advance knowledge of the action and that he had no problem with our representation of police sergeants. At that point, he was speaking with five years of experience as police chief.

Considerable litigation and dispute ensued. In the end, the County unilaterally discontinued voluntary dues deductions for non-unit police officers and the grievance procedure [AP 4-4] was amended to prohibit either Lodge 35 or its President from representing sergeants in grievances. We have since resolved this issue to some degree.

None of this came as a real surprise, because in 1985, the County Attorney, despite a contract provision against it, unsuccessfully caused a suit to go to the Maryland Court of Special Appeals challenging my right to represent a Police Officer III before the Merit System Protection Board. Though we prevailed, the lesson learned was that as of 1985, Montgomery County remained anti-union.

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On three occasions since 1982, a majority of sergeants have signed petitions with Lodge 35 for full collective bargaining rights.

Our bargaining unit members work with sergeants and perform much of the same work under identical conditions. Sergeants are the only unrepresented group of employees who share our working conditions. They should participate in the negotiation of contracts to address our concerns and in the administration of those contracts within a democratic union.

Now the Duncan Administration which for over five years has not supported collective bargaining rights for sergeants, suddenly proposes that sergeants, lieutenants, and captains should have these rights. Clearly, this is not an initiative, but a very shallow response to this bill and a 20 year effort by sergeants to obtain collective bargaining rights.

This is a ploy conceived only after the department got an earlier draft of this bill. Their plan is to expand bargaining to a larger group of employees, create a new unit, and have the unit be represented by a company union.

This attempt to create a company union demonstrates a disrespect for employees' right to organize and is regressive. This is a sad commentary on the administration. Seeking a company union a century after most such unions were abolished in this country is outrageous. They have them in Mexico, in third world countries, and some chicken producers might like to bring them back. Yet, in the year 2000 the Duncan administration seeks one and asks you to help them do it. The only thing they haven't yet proposed is the company store.

The administration has taken the reactionary, short view. The long term effect of their intent would be to drive a wedge between the bargaining unit and sergeants. Sergeants and current unit members must work together. We depend upon each other for mutual protection and safety. Indeed, their lives depend upon one another.

We ask that you reject the administration's proposal and enact support legislation to give sergeants the right to bargain as we propose.

Finally, we notice that this hearing has been advertised rather broadly. While we are here this day supporting our sergeants, we vigorously oppose any attempt to diminish our existing rights under the existing Police Labor Relations Law and would like fair opportunity to address any proposal to do so.

We are available to provide any information or assistance that any councilmember may desire.

Thank you for your careful consideration of this bill and the amendment we propose.

FRATERNAL ORDER OF POLICE
Montgomery County Lodge 35, Inc.



Supervisors Committee

18512 Office Park Drive
Gaithersburg, Maryland 20879
Phone (301) 948-4286 Fax (301) 590-0317

BEFORE THE MONTGOMERY COUNTY COUNCIL

**TESTIMONY OF KIRK HOLUB, CHAIR, SUPERVISORS COMMITTEE,
FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE 35**

Bill 10-00

April 4, 2000

Good afternoon. I am Kirk Holub, a police sergeant and Chairman of the FOP Lodge 35 Supervisors Committee. Lodge 35 is also the elected representative of nonsupervisory police officers.

The Lodge 35 Supervisors Committee is a functional unit of Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants.

Currently, 91 (87%) of 105 sergeants are active dues-paying members of FOP Lodge 35. Of these sergeants, excluding the Supervisors Committee, one is on our Board of Directors, one is treasurer of a committee, one is a steward, and one is a committee member. Since the 1980 Charter amendment requiring collective bargaining for police officers, sergeants have served as President, Vice-President, Treasurer, and in other Lodge positions.

Lodge 35 has represented sergeants in employment matters since 1969. In the past year alone, we have represented sergeants in internal affairs matters under the Law Enforcement Officers' Bill of Rights, and others in grievances. A case involving a sergeant is pending before the Court of Special Appeals.

During recent negotiations with the Department of Justice, Lodge 35 protected the interests of police sergeants and allowed non-represented officers, of all ranks, to vote during the ratification process. The agreement was accepted and litigation, as is occurring in Columbus, Ohio and Pittsburgh was avoided.

Lodge 35 has a history of representation of sergeants. Significantly, there is no history of conflict.

We strongly urge that sergeants be allowed, according to procedures that we will outline, to vote for either representation or no representation. If we vote for representation, we believe that sergeants should be in the existing bargaining unit. There are several reasons for this.

1. We have a community of interest with the existing unit;
2. We are the only unrepresented sworn employees who have identical working conditions to existing unit members;
3. Like the bargaining unit, many of us work shift work;
4. We share the same job risks and dangers as existing unit members;
5. We perform much of the same work as unit members, e.g. making arrests, issuing traffic citations, responding to emergencies, and patrolling neighborhoods.
6. The nature of our job requires a certain closeness and ability to think and respond like others engaged in the same activities, often under dangerous circumstances;
7. We are subject to the same operating procedures as the existing unit.

It is for most of these reasons that, in other jurisdictions, first-line supervisors, such as sergeants, have traditionally been included in the same unit as non-supervisory officers.

Our primary goal is to serve our community on the front-lines and to protect life and property. We do our jobs well by working with those we supervise.

Talk of conflict and concern that there is a need to segregate supervisors from those they supervise defies history, tradition, and the realities of police work. If there is anything to fear, it is perpetuation of the theory that a government employer should drive a wedge between people who the community rely upon to protect their lives and property.

When a person is trapped in a car, we work together to save a life. When a suspect pulls a gun on a police officer, we do not concern ourselves with rank. When a citizen is in need of immediate police assistance, we don't pause to consult. We work together and we get the job done.

In our personal lives, we have close friends who are unit members. Non-represented employees are married to represented officers.

From a bargaining perspective, a unit of 105 officers is relatively small. If segregated by statute, we would be forced to bargain our interests without consideration of the existing unit members' interests and *vice versa*. Instead of working together through bargaining as we work together on the street, we would be forced to work against each other. This is not in the public's best interest.

Moreover, the County would have to negotiate with an additional union. And, if bargaining came to impasse, arbitration could produce very different results. For instance, supervisors could end up with a larger pay increase than those they supervise. This would destroy morale.

The Maryland police departments that have two units for supervisors and non-supervisory officers are Baltimore City which has an officers unit and a sergeants and lieutenants unit, both represented by the same FOP; and Anne Arundel County which has two units, represented by two different unions. Neither Baltimore City nor A.A. County have binding arbitration. A.A. County has had considerable internal chaos. In contrast, Prince George's County where there is binding arbitration, has one unit that includes non-supervisory employees, sergeants and lieutenants. Upon impasse in P.G. County, there is one arbitration, and one result.

In closing, we support collective bargaining with binding arbitration for police sergeants under the same law that currently exists for non-supervisory police officers. Many sergeants are now represented individually by the same union that represents other officers.

We ask that the bill be amended and passed to allow sergeants to vote for representation in August of each year immediately preceding expiration of a contract. If sergeants vote for representation, we would be included in the same unit as non-supervisory officers and accorded full rights under existing certification procedures. If we vote no representation, we would be excluded.

We feel that this is a reasonable compromise proposal that takes into account the major concerns we have heard.

We look forward to working with you in this important matter.

Statement in Support of Bill 10-00

Collective Bargaining for Police Sergeants

My name is Fergus Sugrue. I also am a Montgomery County police sergeant and a member of FOP Montgomery County Lodge 35.

I join Sergeants Holub and Hamill in supporting Bill 10-00 with the amendment they propose.

In 1980, the voters of Montgomery County gave police officers the right to collective bargaining with binding arbitration. When the law was passed, we were excluded. The time has come for us to be afforded this important right within the same bargaining unit as the only other group of employees who work under identical conditions as do we.

I, too, will address the apparent concern of conflict. There should be less concern over imaginary conflict and more concern about potential divisiveness. In Prince George's County and Washington, D.C., the only area jurisdictions with collective bargaining and binding arbitration, sergeants are included in the police bargaining unit under one contract with non-supervisory police officers.

I see no conflict if an organization that represents non-supervisory police officers also represents first-line supervisors at the bargaining table, especially when that bargaining committee includes first-line supervisors.

As sergeants, we are now caught in the middle between management and unit police officers. It would seem to me that there would be less conflict if sergeants and non-supervisory police officers could sit at the bargaining table and work out potential problems and memorialize solutions in a collective bargaining agreement.

Currently, FOP Lodge 35 represents most sergeants under the Law Enforcement Officers' Bill of Rights and the County's own grievance procedure. Collective bargaining with one bargaining unit would merely result in a comprehensive contract with uniform, formalized rights, conditions, and responsibilities under the same agreement with uniform conflict resolution procedures.

Any responsible representative of police officers, like Lodge 35, will avoid against conflict. Lodge 35 has been very successful in doing just that.

As police officers, we are faced with far more serious conflicts and we have a record of resolving them. In our private lives, we deal with neighborhood problems that call upon balancing our private and professional responsibilities; we have personal family interests that can test us; or we could stop a friend, relative, or political official for a traffic offense.

Should some future police chief be suspected of criminal activity, I have every confidence in my brother and sister officers to enforce the law.

Non-supervisory police officers investigate internal complaints against non-supervisory officers and sergeants. Sergeants investigate complaints against sergeants and lieutenants. Friends and relatives of officers supervise investigations of other officers as well as those of friends and relatives of officers, yet there has never been any a concern because we are professional in our dealings.

The County Attorney's office "prosecutes" police officers, including, sergeants, at administrative hearings, and defends the same officers in civil cases arising from the same incident, but no one complains of conflict.

In contrast, collective bargaining must be viewed in the employer-employee context, not the criminal context. I would think there is less potential for conflict if the parties are accorded the opportunity to present their interests at the table.

The public and government interests of Montgomery County and its sergeants (first-line supervisors) would be well served through legislation as we have proposed.

We ask for your support.

Collective Bargaining for Police Sergeants

Good afternoon. I am Russell E. Hamill, III and am a Montgomery County police sergeant, a member of FOP Montgomery County Lodge 35, and an attorney admitted to the Maryland Bar. My wife is a member of the police collective bargaining unit.

I support collective bargaining for police sergeants with a provision that we vote for representation or no representation. And that when represented, we be represented by the same union that represents non-supervisory officers.

Typically, opponents will say that representation by the same union creates conflicts. In our case, I disagree. I will explain the process and facts to put the issue in its proper perspective.

When I began my employment in Montgomery County, I was a member of the police bargaining unit. In 1994 when I was promoted to sergeant, I remained an active member of FOP Lodge 35, but was no longer a member of the bargaining unit.

Promotion meant that I was no longer covered by the collective bargaining agreement, but I remained a merit system employee covered by Personnel Regulations. In essence, I traded a book called "Collective Bargaining Agreement" for another book entitled "Personnel Regulations for Merit System Employees".

The contract was negotiated between the County and my elected representative in a business-like manner under law. The Personnel Regulations were implemented through government processes. In effect, the Personnel Regulations became my contract.

Both the collective bargaining agreement and the contract have grievance procedures. Currently, when a unit member has a grievance, s/he notifies the FOP. Similarly, when a sergeant has a grievance, s/he usually contacts the FOP.

Under the contract grievance procedure, immediate supervisors do not adjust grievances. However, under the County's own grievance procedure, which is available to current bargaining unit members in some situations, supervisors can resolve grievances. Hence, there is less potential for conflict under the contract than under the County's own unilaterally implemented grievance procedure.

Representation during disciplinary interviews is governed by state law and, in most cases, the FOP represents sergeants in procedures under this law. Workers' Compensation is governed by state law and many sergeants use FOP endorsed attorneys for those hearings.

All police-involved shootings are reviewed by the Grand Jury. Under the Constitution, even the innocent have a right to representation in these matters. Most sergeants call upon the FOP for such representation.

Typically, conflict is perceived to occur through contract administration, not contract negotiation.

I have not seen any conflict with FOP representation and know that we, supervisory and non-supervisory officers alike, are professional enough to prevent conflict from interfering with our jobs. The FOP is an organization of police officers and has been very responsible and professional in avoiding conflict.

Policing is different than most other occupations and professions. We are a brother and sisterhood of citizens dedicated to preservation of community peace and security. This is a tough job, but we can do it only through unity without artificial government-created barriers.

Next month, the National FOP will host annual ceremonies honoring all law enforcement officers who have died in service to their communities. New names will be added to the National Law Enforcement Officers' Memorial in D.C.

This Council owes it to its law enforcement officers to visit that memorial. There you will see that heroes' names are not segregated by bargaining unit or rank.

Your support for the bill with the proposed amendments will be appreciated.